



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/159833

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 08, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 18, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. The Petitioner was severely injured in an accident in August 2013. (Testimony of Petitioner)
3. In September 2013, the Petitioner filed an application for Social Security Disability Income (SSDI), stating that he had become disabled by injuries to his neck and spine and by a rod in his right leg. (Testimony of Petitioner; DDB file)
4. The Social Security Administration (SSA) denied the Petitioner's application for SSDI on October 15, 2013. (DDB file)

5. The Petitioner filed for reconsideration of the SSA determination, indicating that his broken leg was not healing properly. (Testimony of Petitioner; DDB file)
6. On January 15, 2014, the SSA again denied the Petitioner's application for SSDI benefits. (DDB file)
7. Petitioner's condition has not changed since the SSA denied his request for SSDI in January 2014. (Testimony of Petitioner)
8. The Petitioner filed an application for disability-based Medicaid (healthcare) benefits on March 31, 2014, stating that he had become disabled from a broken leg and multiple fractures in his neck and spine. (Testimony of Petitioner; DDB file)
9. On June 27, 2014, the Disability Determination Bureau (DDB) sent the Petitioner a notice indicating that it denied his application for Medicaid benefits. (Id.)
10. The Petitioner filed a request for reconsideration of the DDB decision on July 8, 2014, indicating that he still could not walk. (Testimony of Petitioner, DDB file)
11. The DDB again denied Petitioner's application for Medicaid on August 11, 2014. (DDB file)
12. On August 14, 2014, the DDB forwarded the Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or his condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
  - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Here, Petitioner applied for SSDI and Medicaid benefits based upon the same disabling conditions – a fracture to his leg and fractures to his spine and back; Petitioner's application for MA benefits was filed only two

months after the most recent denial of benefits by the SSA and Petitioner's condition has not changed since the SSA denied his application for SSDI benefits in January 2014.

Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

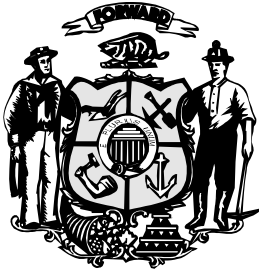
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of September, 2014.

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sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 22, 2014.

Kenosha County Human Service Department  
Disability Determination Bureau